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BEFORE THE FEDERAL ELECTION COMMISSION

2007 OCT 19 PM 2:01

In the Matter of  
Ted Poe for Congress,  
Virgil Poe as Treasurer

MUR 5940

**RESPONSE OF RESPONDENTS TED POE FOR CONGRESS,  
VIRGIL POE AS TREASURER, TO THE COMPLAINT**

By and through the undersigned counsel, Respondents Ted Poe for Congress,  
Virgil Poe as Treasurer (hereinafter "Respondents") hereby responds to the complaint in  
the above-captioned matter. Because the Commission has already considered all the  
issues raised in the complaint, Respondents respectfully request that the matter be  
dismissed.

**I. INTRODUCTION**

The complaint is not unlike others filed by the same complainant (the pro-Democrat, anti-Republican CREW<sup>1</sup>), and dismissed by the Commission. Long on rhetoric and legal jargon, yet short on analysis, the complaint is nothing more than yet another effort by CREW to send out its hyperbolic press releases and get cheap headlines at the expense of Republican officeholders and candidates. For this reason alone, the complaint ought to be dismissed.

Moreover, the complaint does not bring to light anything new -- instead, it simply copies a handful of RFAs (all of which included RADs standard accusatory boilerplate regarding best efforts) and rehashes and overstates a recent audit report. But what the

<sup>1</sup> Despite its self-proclaimed non-partisan status, CREW has only filed complaints against Republicans, not Democrats. See <http://www.citizensforethics.org/actions/fec>

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complaint fails to mention is that the Commission has already dealt with all the issues raised in the complaint. In fact, during one of the two public meetings discussing the audit, the Commission's Chairman made clear that nothing in the audit as adopted by the Commission warranted an enforcement action. Thus, because the complaint adds nothing new (nor could it), the complaint ought to be dismissed.

## **II. ANALYSIS**

The complaint is nothing more than a rehash (combined with some overstatement) of two issues already addressed by the Commission: best efforts and reporting receipts from a joint fundraising committee. Neither warrants further action.

### **A. Best Efforts**

In support of its best efforts accusations, the complaint cites to a handful of RAD letters and the audit report. Of course, if RAD letters were sufficient to sustain a complaint, virtually every Federal campaign in America would be a named respondent in an enforcement action.<sup>2</sup> Use of the audit report fares no better, as Respondents did exercise their best efforts.<sup>3</sup>

#### ***1. Respondents did utilize best efforts***

As explained to the auditors, Respondents did in fact use their best efforts to obtain the requisite contributor information, and has already amended its reports to

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<sup>2</sup> This complaint is yet another example of the damage that boilerplate RAD letters, particularly those like the ones cited in the complaint that claim legal violations based upon random samples, cause to those who try and comply with the law. In fact, the Commission in at least two matters has already rejected this approach. See ADR 264 & 293 (where RAD referred matters to ADR, claiming best efforts violations when the respondents had in fact properly used best efforts, the Commission dismissed the matters). Despite such Commission action, as well as numerous complaints from the regulated community, RAD continues to send its improper accusatory letters, apparently unchecked by the Commission.

<sup>3</sup> The complaint, as is typical of CREW, misstates the law that it is a violation for a committee to "fail to provide" certain information. This is an issue that has already been litigated, and CREW's assertion has been rejected – a committee should ask for the information, but the contributor has no obligation to provide it. See *Republican Nat'l Comm. v. FEC*, 76 F.3d 400 (D.C. Cir. 1996), *cert. denied*, 519 U.S. 1055 (1997).

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include any new information it has obtained regarding its contributors Respondents did in fact include on its solicitations a clear request for the contributor's full name, mailing address, occupation, and name of employer – and produced supporting documentation to the auditors As also explained to the auditors, in the event a contributor did not provide the requested information, a follow-up letter asking for the information was sent within 30 days of receipt of the contribution This documentation was also provided to the auditors <sup>4</sup> Despite its compliance with its best efforts obligation, Respondents, at their own expense, sent a second letter to such contributors This, too, was provided to the auditors Any additional information that was obtained as a result of this second request has already been included on Respondents' reports Thus, it is not surprising that the auditors ultimately did not pursue the issue further, and concluded by stating that Respondents "filed amended reports that materially disclosed occupation/name of employer information "

## ***2. Use of percentages and samples is improper***

But even if the auditors had attempted to pursue the issue further, they would have failed due to their habitual misuse of percentages and small random samples A few simple examples illustrate the problem Say a committee has 100 itemized contributors, utilizes its best efforts, and has obtained information on 88 contributors On those facts, neither RAD nor Audit would raise an issue But say a random sample was used – RAD and Audit typically use small samples, so to be generous, assume they look at 20% (although they usually look at less) Depending on what the sample includes, a close to

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<sup>4</sup> As noted in the final audit, the auditors claimed in their interim report that Respondents lacked evidence to demonstrate best efforts Respondents contested this assertion, and provided documentation that it had provided such evidence to the auditors (by providing the date and time such information was faxed, to whom it was faxed, and confirmation of receipt) The auditors did not pursue the matter further

90% complete report can be made to look like over half the contributions lack the requisite information (if, for example, the sample includes the 12 contributions for which information was not included)

Such percentages and samples are particularly discriminatory against smaller campaigns. Say a campaign has 5 itemized contributors, but lacks information for three of its contributors. Using the sort of language and standards employed by RAD and Audit, that campaign failed to include required information for 60% of contributors! Whereas a larger campaign could lack information for dozens of contributors, yet escape the scrutiny faced by the smaller campaign, since its more egregious missteps could be masked by a favorable sample and/or percentage calculation.

And this slight-of-hand is now being exploited by CREW at the expense of Respondents. They twist the 40% number used by the auditors (which the auditors could not defend during the public meetings, and conceded that it was not a reliable sample) to recklessly leap to the conclusion that Respondents lacked information for all sorts of contributors. Of course, the Commission has already considered all this, and has already determined that this issue does not require further action. Accordingly, the complaint ought to be dismissed.

#### **B. Joint Fundraising Receipts**

The complaint's other issue, regarding the reporting of receipts of joint fundraising proceeds, fares no better. Once again, the complaint misstates the audit report. As clearly stated in the audit report, Respondents did properly itemize transfers-in from the joint fundraising representatives. However, at the suggestion of the auditors, Respondents did file amendments to include memo entries on Schedule A itemizing gross

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receipts as contributions from the original contributors<sup>5</sup> As Respondents explained to the auditors, Respondents had followed the reporting instructions provided by the joint fundraising representatives Moreover, the joint fundraising committee (an affiliated committee of Respondents) did itemize the gross receipts as contributions from the original contributors (thus, the public was fully informed of the source of the funds) Ultimately, the auditors stated in the final report that Respondents did file the recommended reports, and did not pursue the matter further Accordingly, the complaint ought to be dismissed

### **III. CONCLUSION**

The Commission has already dealt with the matters raised in the complaint, and determined that an enforcement action is unwarranted, and regardless, Respondents did not violate applicable Commission regulations as asserted in the complaint Accordingly, the complaint ought to be dismissed

Respectfully submitted,



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<sup>5</sup> Commission regulations do not explicitly require this, and can be read as not requiring such itemization Although 11 CFR 102.17(c)(8) does refer to participating committees filing memo entries Schedule A, it says such reporting is required "to the extent required by . 104.3(a)" But 104.3(a)(3) (applicable to authorized committees, which includes joint committees) only appears to require the reporting of the "[t]ransfers from other authorized committee(s) of the same candidate, regardless of amount," 11 CFR 104.3(a)(3)(vi), and is silent as to any requirement to further itemize such transfers Thus, although Respondents cooperated with the auditors and filed amendments per their request, its original reports did not violate Commission regulations



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STATEMENT OF DESIGNATION OF COUNSEL  
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The above-named individual and/or firm is hereby designated as my  
counsel and is authorized to receive any notifications and other communications  
from the Commission and to act on my behalf before the Commission

10-8-07  
Date

[Signature]  
Respondent/Client Signature

Assistant Treasurer  
Title

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